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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/730,629

12/08/2003

Bhashyam Ramesh

11141

4241

26890 7590 06/23/2009

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EXAMINER

NELSON, FREDA ANN

ART UNIT

PAPER NUMBER

3628

MAIL DATE

DELIVERY MODE

06/23/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/730,629	<b>Applicant(s)</b> RAMESH ET AL.	
	<b>Examiner</b> FREDA A. NELSON	<b>Art Unit</b> 3628	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 09 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1,3-15,17-28,30-42, and 44-56.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/JOHN W HAYES/  
 Supervisory Patent Examiner, Art Unit 3628

Continuation of 11. does NOT place the application in condition for allowance because:

1. In response to Applicant's argument that in regards to claims 1, 15, 28, and 42, Osborn does not teach "substituting the stored actual access path cost for the estimated access path cost, the Examiner respectfully disagrees. Osborn discloses for each new query, a cost optimizer located within the computer system DBMS determines a most efficient execution plan for accessing the requested data, along with an estimate of the corresponding (relative) system "cost" for executing the query. This estimated cost is returned to the QPP module at the respective user station, which employs a "nearest neighbor" algorithm to determine an estimated central processing unit ("CPU") time required for executing the present query by extrapolating CPU times recorded for past queries having the same or similar estimated costs for accessing the same, or similar, tables and items in the database (col. 2, lines 9-20).

Osborn further discloses the QPP module 46 compares the estimated cost 44 and result set 45 for the present query 40 to the recorded estimated costs and result sets of past queries, searching out those past queries having the same or similar estimated costs for accessing the same, or similar, tables and items in the database located in a query statistics cache 48 associated with the database applications layer 36 (col. 6, lines 43-50).

Osborn still further discloses if an exact match is found between the present query 40 and a recorded past query 58 stored in the cache 48 (i.e., wherein both queries have the same estimated costs for the same result sets), the QPP module 46 selects the recorded actual CPU time 72 of the matching past query 58 as an estimated CPU time 82 for the present query 40 (col. 7, lines 10-16).

2. In response to Applicant's argument that in regards to claims 6-9, 20-23, 34-36, and 48-50, Access Path Selection in view of Osborn and further in view of Tyunelev is missing at least one element from independent claims 1, 15, 28, and 42 and those same elements are missing from dependents claims 6-9, 20-23, 34-36, and 48-50, the Examiner respectfully disagrees for reasons applied to claims 1, 15, 28, and 42 above.